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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,513	01/23/2002	Anthony Brennan	1442026	9358

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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,513

Applicant(s)

BRENNAN ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 19, 20, 22, 33 and 37-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21, 23-32, 34-36, 40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. During a telephone conversation with Victor A. Cardona on March 29, 2004 a provisional election was made without traverse to prosecute the invention elected and prosecuted by applicant's in the parent application, namely the invention of Species I, claims 1-18, 21, 23-32, 34-36, 40 and 41. Affirmation of this election must be made by applicant's in replying to this Office action. Claims 19, 20, 22, 33 and 37-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "water source" and "air source" set forth in claim 24 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is required to submit a proposed drawing correction in response to this Office action. Any proposal by applicant for amendment of the drawings to cure defects must consist of two parts:

a) A separate letter to the draftsman in accordance with MPEP 608.02(r); and

b) A print or pen-and-ink sketch showing changes in red ink in accordance with MPEP 608.02(v).

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IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office action, and may not be deferred.

3. The disclosure is objected to because of the following informalities: Paragraph 0026, lines 5 and 8, reference numerals "205" and "210" designate the same element, lines 8 and 9, "72" apparently should be --172--; and paragraph 0028, lines 3, 4 and 6, "170" apparently should be --200--.

Appropriate correction is required.

4. Claims 1-18, 21, 23-32, 34-36, 40 and 41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 24, 28, 34 and 40 now recite a body "immovable relative to said wall during operation". This subject matter is not described in the instant specification and is therefore considered to be new matter.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and

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distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to whether the "water source" and "air source" are intended to be part of the claimed combination since structure of the "hydrotherapy tub" is defined as being connected thereto (lns. 3-5), but no positive structural antecedent basis therefor has been defined.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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7. Claims 1-10, 16-18, 21, 23 and 28-32, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Martin '259.

The Martin '259 ('259) reference (Fig. 11) reference discloses a fluid flow system comprising: a body 83 including a first chamber 99 having an inlet (pg. 4 ln. 36), a second chamber 100 having an inlet (pg. 4 lns. 26-27), and a plurality of perpendicular outlets (means) 102,103, as claimed. The "hydrotherapy-tub" is not set forth as part of the claimed combination, but rather merely as intended use, and the '259 body is capable of performing the recited function of receiving water and air through a single opening in the tub. Furthermore, the '259 body is capable of being "immovable relative to said wall during operation". Re claims 16-18, 21 and 28, each outlet/chamber/inlet meets the intended use of "water" and "air" as these labels do not define any particular structure of an outlet/chamber/inlet.

8. Claims 1-10, 16-18, 21, 23-32, 34-36, 40 and 41, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over '259 and Gardenier et al.

The '259 system further comprises a hydrotherapy tub 39 including an inner surface.

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Re claim 24, chamber 100 can be called the "first chamber" and chamber 99 can be called the "second chamber". Moreover, '259 discloses water 98 and air 94 sources. Although the hydrotherapy tub of the '259 fluid flow system does not include an opening, as claimed, attention is directed to the Gardenier et al. (Gardenier) reference which discloses an analogous fluid flow system which further includes a hydrotherapy tub 11 having an opening (receiving 50). Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the art to associate an opening with the '259 tub in order to facilitate installation.

9. Claims 11-15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over '259 either alone or taken with Gardenier as applied to claim 1 above, and further in view of Guiler.

Although the injectors 102,103 of the '259 hydrotherapy tub do not include conical structures, as claimed, attention is directed to the Guiler reference which discloses an analogous hydrotherapy tub which further includes an injector 2 having a conical structure 18. Therefore, in consideration of Guiler, it would have been obvious to one of ordinary skill in the art to associate conical structures with the '259 injectors in order to increase flow velocity.

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10. Claims 16-18 and 32, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over '259 either alone or taken with Gardenier as applied to claims 1 and 28 above, and further in view of Martin '260.

Re claim 16, although the "air" outlets 103 of the '259 hydrotherapy tub are not inside the "water" outlets 102, as claimed, attention is directed to the Martin '260 ('260) reference which discloses an analogous hydrotherapy tub which further includes air outlets inside water outlets (pg. 2 lns. 70-73). Therefore, in consideration of '260, it would have been obvious to one of ordinary skill in the art to orient the "air" outlets inside the "water" outlets of the '259 hydrotherapy tub in order to interchange the air and water sources. Re claim 18, the "configured to be located" limitation is met by the interchanged air and water sources taught by '260.

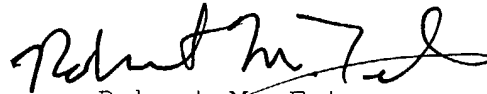
11. Applicant's argue at page 11 of the response filed February 11, 2004 the finality of the December 31, 2003 Office action was improper because the amended claims were not drawn to the same invention. To the contrary, applicant's elected to prosecute only one invention as acquiesced at the top of page 12 of the same response. Therefore, all amended claims must have been directed to the same invention or they would not have been examined as per 37 CFR 1.142(b). Applicant's arguments with

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respect to claims 1, 24, 28, 34 and 40 and prior art have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's are referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the printed name.

Robert M. Fetsuga
Primary Examiner
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